

At the hearing on Wednesday I believe Rep. Winckler asked for some chronological details regarding the overtime issue I mentioned. Reference also the other attachments.

On January 16, 2008 the Department for the Blind was notified by DAS of a decision to classify certain previously overtime exempt job classes affecting approximately 55 current and former employees as overtime eligible. This decision was pursuant to a review of a number of job classes in state government conducted by DAS and the attorney general's office in the context of the "white collar" exemption allowed under the Fair Labor Standards Act (FLSA). We were unaware of this review until January 16. As you will notice from the attachments, this decision also affected other agencies in state government.

On January 23, 2008 we appealed the decision to DAS where certain job classes were concerned and accepted the decision regarding other classes. Our appeal was based on the professional exemption allowed at 29 CFR 541.301(a) and language in the Rehabilitation Act of 1973, as amended, affecting some personnel issues.

On February 20, 2008 DAS notified me the appeal was denied on the grounds that the subject job classes did not meet the test required for a professional exemption.

On May 20, 2008, having heard nothing further for 90 days I asked whether DAS was proceeding with an implementation plan for paying the overtime. As I recall, DAS replied later, indicating the need to establish a protocol for resolving the issues, including a review by the attorney general's office.

On July 22, 2008 DAS informed us the decision would be implemented effective July 11, 2008 and would be retroactive to June 30, 2006, or by approximately two years. The retroactivity was news.

On July 28, 2008 DAS issued a corrected version of the tracking form supplied on July 22. By then, however, we had already notified employees of the need to gather their records of time worked during the previous two years. Existing time records in the payroll system did not indicate overtime because of the prevailing exemption.

By August 7, 2008, if not sooner, affected employees had begun submitting good faith estimates of time worked since June 30, 2006.

During the interim the remaining claims were filed by employees, reviewed by respective supervisors and by me. Some claims were accepted as filed. Others were reduced based on a further review of calendars, travel vouchers, vacation records, planners, etc. The claims were then forwarded to the attorney general's office and to central payroll for their investigations and reviews for purposes of an independent determination as to the validity of the claims and that the claims had not already been paid. Some employees were personally interviewed by an investigator from the attorney general's office. As these reviews were completed the claims were sent to the state appeal board.

On April 6, 2009 the Department for the Blind received approval from the appeal board to pay the first of the claims. Later appeal board meetings eventually approved other claims for payment after resolving the board's remaining questions. It was also at approximately this time we began exploring the possibility of filing a request for a maintenance of effort waiver for 2010.

On July 9, 2009 I was notified by the Rehabilitation Services Administration of their determination that for purposes of financial reporting the cost of the claims (approximately \$ 600,000) should be allocated to respective years according to when the time was worked, not when the appeal board approved them as a liability, and that they should also be allocated among related programs. The majority of the cost accrued to Title I funds and primarily affected the years ended September 30, 2006, 2007, and 2008. Since the appeal board transferred sufficient funds to the Department for the Blind to pay the costs allocable to those years and also since federal grants available for the affected years had already been exhausted, the 2008 expense is necessarily classified as an addition to the state share and subject to the MOE calculation.

By December 1, 2009 it had become clear any petition for a waiver of a maintenance of effort violation in 2010 would be considered only after I had filed a report on actual spending for the year ended September 30, 2010. The report was submitted on October 29, 2010. The request for the waiver was sent to RSA on December 27.